119-387

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 580.

MARY E. WILSON, PLAINTIFF IN ERROR,

vs.

ROBERT BLAIR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED SEPTEMBER 7, 1885.

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1 Pleas before the Hon. Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska within the eighth judicial circuit, sitting in the circuit court of the United States for said district, at the term of May, A. D. 1884.

Be it remembered that on the 20th day of December, 1882, a petition was filed in the office of the clerk of said circuit court, which said petition is in words and figures following, to wit:

In the Circuit Court of the United States of America in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON & PARK G. DOBSON.

Robert Blair, the above-named plaintiff, complains and shows to this court that he is a resident and a citizen of the county of Livingston, in the State of Illinois, one of the United States of America, and that the above-named defendants, Mary E. Wilson and Park G. Dobson, are residents and citizens of the county of Butler, in the State of Nebraska, one of the United States of America; that the amount in controversy in the above-entitled suit exceeds five hundred dollars, exclusive of costs; and for a cause of action herein this plaintiff avers that he is the owner in fee-simple of the south half of southeast quarter and northwest quarter of southeast quarter of section twenty-eight, in township thirteen north, of range two east, in the county of Butler and State of Nebraska, and that he is entitled to the immediate possession of the same; that the above-named defendants, Mary E. Wilson and Park G. Dobson, unlawfully keep the above-named plaintiff, Robert Blair, out of the
2 possession of said above-described lands.

Wherefore this plaintiff demands judgment against the above-named defendants for the recovery of the possession of the above and foregoing described lands, and for his costs of suit.

M. H. SESSIONS,
Att'y for Plaintiff.

STATE OF NEBRASKA, }
Lancaster County, } *ss:*

M. H. Sessions, being first duly sworn, does on oath say that he is the attorney of record in the above-entitled case for the plaintiff; that said plaintiff is a non-resident of this State and is not here to make this verification; that this affiant believes the facts above stated to be true.

M. H. SESSIONS.

Subscribed in my presence and sworn to before me this 19th day of December, A. D. 1882.

[SEAL.] N. C. ABBOTT,
Notary Public.

Upon the back of said petition appear endorsements in words and figures following, to wit: No. 314. Doc. F. Robert Blair *vs.* Mary E. Wilson and Park G. Dobson. Petition. Filed Dec. 20, 1882. Elmer D. Frank, clerk. M. H. Sessions, att'y for pl'ff.

Thereupon, afterwards, to wit, on the 5th day of February, 1883, an amended answer was filed in said case, which said amended answer is in words and figures following, to wit:

Amended Answer.

In the Circuit Court of the United States of America in and for District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON & PARK G. DOBSON.

Now comes the said Park G. Dobson and, answering for himself, says that he denies that the said plaintiff is the owner in fee-
3 simple of the said lands in his said petition described, and denies that said plaintiff has any legal estate therein whatever. Said defendant says that he has a legal estate in and to seven and one-half acres of the east side of the said northwest quarter of said southeast quarter of said section 28, more particularly described as follows: Beginning at the northeast corner of said northwest quarter of said southeast quarter; thence west fifteen rods; thence south eighty rods; thence east fifteen rods; thence north eighty rods to the place of beginning. And defendant says that he and his grantees have had and held the peaceable and quiet possession and occupancy of said seven and one-half acres from the 8th day of May, 1878, up to and were so holding and occupying at the time of the commencement of this action.

WM. F. CHAPIN AND
JAS. E. PHILPOTT,
Att'ys for said Def't.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Jas. E. Philpott, being first duly sworn, says that he is one of the attorneys of record of the said Park G. Dobson; that he is duly authorized in the premises; that said Park G. Dobson is absent from said county of Lancaster; that the facts stated in the said defendant's foregoing amended answer are true in substance and fact, as he verily believes.

JAS. E. PHILPOTT.

Subscribed in my presence and sworn to before me this 5th day of February, 1883.

ELMER D. FRANK, *Clerk.*

Upon the back of said amended answer appear endorsements in words and figures following, to wit: No. 314. Doc. F. Robert Blair *vs.* Mary E. Wilson, Park G. Dobson. Amended answer of Park G. Dobson. Filed Feb. 5, 1883. Elmer D. Frank, clerk. Wm. T. Chapin and Jas E. Philpott, att'ys for Park G. Dobson.

4 Thereupon afterwards, to wit, on the said 5th day of February, 1883, amended answer of Mary E. Wilson was filed in

said case, which said amended answer is in words and figures following, to wit:

Amended Answer of Mary E. Wilson.

UNITED STATES OF AMERICA, *District of Nebraska:*

In the Circuit Court Thereof.

ROBERT BLAIR *vs.* MARY E. WILSON & PARK G. DOBSON.

Mary E. Wilson, answering for herself, says she denies that the said plaintiff is the owner in fee-simple of the said south half of the southeast quarter and the northwest quarter of the southeast quarter of said section twenty-eight, and denies said plaintiff has any legal estate in said lands whatsoever. The said defendant avers that she has a legal estate in and to all of said lands except seven and one-half acres off the east side of the northeast quarter of said southeast quarter of said section 28, being a strip of land fifteen rods wide, east and west, by eighty rods long, north and south. And said defendant further saith that she and her grantees have occupied and had and held the peaceable and quiet possession of said lands so owned by her from the 8th day of May, 1878, up to the present time.

J. C. CROOKER FOR
MARY E. WILSON.

STATE OF NEBRSAKA, }
Lancaster County, } *ss:*

J. C. Crooker, being first duly sworn, on oath says that he is the attorney of Mary E. Wilson, one of the defendants in the foregoing-entitled suit, and that said defendant, Mary E. Wilson, is a non-resident of the county of Lancaster, Nebraska, and she is not here
5 to make this verification; that this affiant believes that facts above stated in her answer are true.

J. C. CROOKER.

Subscribed in my presence and sworn to before me this 5th day of February, 1883.

[SEAL.] W. H. SNELLING,
Notary Public.

Upon the back of said amended answer appear endorsements in words and figures following, to wit: No. 314. Doc. F. Robert Blair *vs.* Mary E. Wilson *et al.* Amended answer of Mary E. Wilson. Filed Feb. 5, 1883. Elmer D. Frank, clerk. J. C. Crooker, def'ts' attorney.

Thereupon, afterwards, to wit, on the 5th day of February, 1883, replies were filed in said case, which said replies are in words and figures following, to wit:

In the Circuit Court of the United States in and for District of Nebraska.

ROBERT BLAIR *v.* MARY E. WILSON & PARK G. DOBSON.

And now comes the above-named plaintiff and denies each and every allegation of new matter contained in the amended answer of Park G. Dobson.

M. H. SESSIONS,
Att'y for Pl'ff.
WM. F. CHAPIN &
J. E. PHILPOTT,
Att'ys for Def't.

Verification waived.

Upon the back of said reply appear endorsements in words and figures following, to wit: No. 314. F. Robert Blair *vs.* Mary E. Wilson & Park G. Dobson. Reply to amended answer of Park G. Dobson. Filed Feb. 5, 1883. Elmer D. Frank, clerk. M. H. Sessions, att'y for pl'ff.

In the Circuit Court of the United States in and for the District of Nebraska.

6 ROBERT BLAIR *vs.* MARY E. WILSON & PARK G. DOBSON.

And now comes the above-named plaintiff and denies each and every allegation of new matter contained in the amended answer of Mary E. Wilson.

M. H. SESSIONS,
Att'y for Plaintiff.
J. C. CROOKER,
Att'y for Mary E. Wilson.

Verification waived.

Upon the back of said reply appear endorsements in words and figures following, to wit: No. 314. F. Robert Blair *vs.* Mary E. Wilson & Park G. Dobson. Reply to amended answer of Mary E. Wilson. Filed Feb. 5, 1883. Elmer D. Frank, clerk. M. H. Sessions, att'y for pl'ff.

Thereupon, afterwards, at the January term of said court, on the 5th day of February, 1883, the following proceedings were had, as appears of record on folio 422, journal "H" of said court, to wit:

Trial.

ROBERT BLAIR *vs.* MARY E. WILSON *et al.*

Now come the parties herein, by their attorneys; also come the following-named persons as jurors, to wit: 1, Wm. Daily; 2, Victor Vifquain; 3, W. F. Wright; 4, D. C. Work; 5, J. P. Miller; 6, S. P. Benadum; 7, John Doolittle; 8, Solomon Ramsey; 9, W. R. Horn; 10, E. W. Wilcox; 11, Carl Aldrich; 12, James Allen, who were

duly empaneled and sworn according to law; and thereupon, after hearing the evidence, argument, and charge of the court, the
7 jury, without leaving their seats, present to the court their verdict, which is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

ROBERT BLAIR
vs.
MARY E. WILSON and PARK G. DOBSON, Def'ts. } 314 F.

We, the jury, being duly empaneled and sworn, do find and say that we find on the issue joined for the said defendants.

JOHN DOOLITTLE, *Foreman.*

Whereupon it is ordered by the court that judgment be, and the same is hereby, entered for the defendants upon said verdict; and, on motion of the plaintiff, it is further ordered by the court that said judgment and verdict be, and they are hereby, set aside and a new trial ordered. Cause continued.

Thereupon afterwards, at the January term of said court, on the 14th day of January, 1884, the following proceedings were had, as appears of record on folio 141, journal "I" of said court, to wit:

ROBERT BLAIR
vs.
MARY E. WILSON *et al.* } Trial. 314 F.

Now come the parties herein, by their attorneys; also come the following-named persons as jurors, to wit: 1, A. Canfield; 2, Alford Bruner; 3, J. A. Force; 4, L. W. Miller; 5, M. Steine; 6, John Scribbins; 7, Sidney Smith; 8, C. D. Martin; 9, T. J. Mason; 10, W. R. Sapp; 11, W. W. Kendall; 12, C. M. Pike, who were duly empaneled and sworn according to law.

8 And thereupon the parties agree to stipulate as to facts and try this cause to the court; and, on motion, it is ordered by the court that said jury be and the same is discharged, and this cause is thereupon argued and submitted to the court by attorneys for the respective parties on said stipulations of facts.

Thereupon afterwards, to wit, on the said 14th day of January, 1884, stipulation was filed in said case, which said stipulation is in words and figures following, to wit:

In United States Circuit Court in and for the District of Nebraska.

ROBERT BLAIR
vs.
MARY E. WILSON and PARK G. DOBSON.

Cause submitted on the pleadings and the following stipulations, and to be decided by the court and without the intervention of a jury:

1st. That the land described in petition was entered by military bounty-land warrant No. 3935, on the 26th day of Nov., 1867.

2. That said entry so made on the 26th day of Nov., 1867, was suspended on the 11th day of Dec., 1868, in the manner and for the reasons set forth, as shown by copies of letters hereto attached and made a part of this stipulation, dated, respectively, Dec. 11th, 1868, July 17th, 1878, May 4th, 1881, May 8th, 1879, March 24th, 1879.

3. That when the said land warrant was returned from the local office at Lincoln, on the 17th day of March, 1879, to the General Land Office, there was no revenue stamp attached to the assignments on said warrant.

9 4. That said suspension of said entry was removed and the location approved and passed for patenting, as in said letters stated, and was patented July 20th, 1881.

5. That the said location was made at the time and manner as shown by certified and exemplified copy of location and entry dated Nov. 26th, 1867, hereto attached and made a part hereof.

6. That the defendants' title to said lands and their occupation thereof is under and by virtue of the deed executed and delivered by Frank Davis, county treasurer of Butler Co., Neb., hereto attached and made a part hereof.

7. That the said defendants are the grantees of Charles L. Flint, the grantee named in said deed executed by said Frank Davis, treasurer, &c., and that said Charles L. Flint and his said grantees have held the possession and occupancy of said lands under the said treasurer's deed for the six years last past, immediately preceding the commencement of this suit, and ever since and now are in the actual occupancy of said lands.

8. That the said defendants now have, and have had for five years preceding the commencement of this suit, all the title and estate in and to said lands that the said Charles L. Flint acquired by said treasurer's deed.

MARY E. WILSON AND
PARK G. DOBSON,
Defendants,
By J. C. CROOKER &
JAS. E. PHILPOTT,
Their Attorneys and Counsellors.
M. H. SESSIONS,
Att'y for Robert Blair, Pl'ff.

Attached to said stipulation are papers in words and figures following, to wit:

10 GENERAL LAND OFFICE, *December 11th*, 1868.

GENTLEMEN: The location made at the Nebraska City land office on the 26th day of November, 1867, by Robert Blair, of La Salle county, Illinois, with bounty land warrant No. 3935, for 120 acres, act of 1855, R. & R., No. 2480, on the S. ½ and N. W. ¼ of S. E. ¼ sec. 28, T. 13 N., R. 2 east, has been under examination at this office.

I find said warrant is assigned at the county of La Salle, in the State of Illinois, by the warrantee, Matthias Shaul, to Sarah Burk, and by her, at the same place, to Robert Blair, the locator; but both of said assignments are without any attesting witnesses, and without the proper amount of internal revenue stamps, as required by law and the rules of this office.

You will, therefore, notify the locator that before a patent can issue he must cause each of said assignments to be properly perfected by procuring two subscribing witnesses to each, and affix to each a 5-cent revenue stamp where I have marked with a pencil thus: X.

For his convenience I herewith enclose you said warrant, stamped located, to prevent it being used should it fall into improper hands; and when the same shall have been so perfected and stamped you will return it to this office, when, if found to be correct, a patent will issue.

Very respectfully, your ob't serv't,

J. O. WILSON,
Commissioner.

Register and receiver, Lincoln, Nebraska.

U. S. LAND OFFICE,
LINCOLN, NEB., *Dec. 22d*, 1882.

I hereby certify that the above is a true and correct copy of the original letter which is now on file in this office.

H. D. ROOT, *Receiver.*

11 *B. Enclosure. N.* 53912.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July 17th*, 1878.

Register and receiver, Lincoln, Nebraska.

GENTLEMEN: As a reply to the receiver's letter of 10th inst. relative to M. B. land warrant No. 3935, 120 a., act of 1855, I inclose copy of letter dated Dec. 11th, 1868, addressed to the district officers at Lincoln, Nebraska, by which you will see that said warrant was located at Nebraska City, Nov. 26, 1867, upon the S. ½ of S. E. ¼ and N. W. ¼ of S. E. ¼, 28.13 N., 2 E., by Robert Blair; also that said location was suspended on account of defective assignment, &c., and that the warrant was returned to the R. & R. for correction.

You will endeavor to carry out the instructions contained in my letter of Dec. 11th, 1868, and, if successful, return the warrant, that patent may issue thereon.

In your further correspondence relative to this case please refer to this as B by its date.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

RECEIVER'S OFFICE,
LINCOLN, NEBR., *Dec.* 22*d*, 1882.

I hereby certify that the above is a true and correct copy of the original which is now on file in this office.

H. D. ROOT, *Receiver.*

(Letter of July 17, 1878.)

12 WASHINGTON, D. C., *March* 24, 1879.

Register and receiver, Lincoln, Nebraska.

GENTLEMEN: I am in receipt of the receiver's letter of 17th inst. inclosing M. B. land warrant No. 3935, 120 acres, Oct., 1855, in reply to my circular letter of March 8, 1879.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 8, 1879.

Register and receiver.

GENTLEMEN: From time to time for many years military bounty land warrants have been returned to the several local offices, in order to have defective assignments perfected. Should any such warrants still remain in your possession you will at once return them to this office, with careful reference to date of the letter transmitting the same.

Prompt attention is expected.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

13 (*B. Warrant.*)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 4*th*, 1881.

Register and receiver, Lincoln, Nebraska.

GENTLEMEN: November 26, 1867, Robert Blair located warrant 3935, 120 acres, act 1855, at Nebraska City, upon the S. ½ of S. E. ¼ and N. W. ¼ of S. E. ¼ 28, 13 N., 2 E., R. & R., 2480.

The location was suspended for the reason that the proper number of revenue stamps had not been attached to the assignments of the warrant; also for the reason that no witnesses' names were attached to said assignments.

The rev. stamps have been attached, and in view of the fact that the officers before whom the acknowledgments were made have certified to the identity of the assignors, and that 18 years have elapsed since the assignments were made and no objections thereto have been filed in this office, I have this day caused the suspension to be removed and the location approved and passed for patenting, no

adverse claim to the tract being shown by our records. Make the proper notes on your records.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

U. S. LAND OFFICE, LINCOLN, NEB., *Dec.* 22, 1882.

I hereby certify that the above is a true and correct copy of the original which is now on file in this office.

H. D. ROOT, *Receiver.*

(Letter of May 4, 1881.)

14 *B.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June 4th*, 1883.

I, I. Harrison, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the application by Robert Blair to locate warrant 3935, 120 A., act 1855, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] I. HARRISON,
Acting Commissioner of the General Land Office.

(4—002.)

Military Bounty Land Act of March 1, 1855.

Land warrant, No. 3935. Register & receiver's No., 2480.

LAND OFFICE, NEBRASKA CITY, *November* 26, 1867.

We hereby certify that the attached military bounty land warrant No. 3935 was on this day received at this office from Robert Blair, of La Salle county, State of Illinois.

S. McCONIGA, *Register.*
H. KENNEDY, *Receiver.*

I, Robert Blair, of La Salle county, State of Illinois, hereby apply to locate, and do locate, the S. ½ and N. W. ¼ of S. E. quarter of section No. 28, in township No. 13 north, of range No. 2 east, in the district of lands subject to sale at the land office at —, containing 120 acres, in satisfaction of the attached warrant numbered 3935, issued under the act of March 3, 1855.

15 Witness my hand this 26th day of November, A. D. 1867.

ROBERT BLAIR.

Attest:
S. McCONIGA, *Register.*
H. KENNEDY, *Receiver.*

I request the patent to be sent to —— ——.

2—580

LAND OFFICE, NEBRASKA CITY, *November* 26, 1867.

We hereby certify that the above location is correct, being in accordance with law and instructions.

H. KENNEDY, *Receiver.*
S. McCONIGA, *Register.*

Endorsed: No. 3935. 120 acres. Act of March 3, 1855. Located at Nebraska City Nov. 26, 1867. Approved as to Div. C May 3, 1881. H. W. Received May 4, 1881, and passed for patenting. Stokes. Patented July 20, 1881. Recorded vol. 532, page 57. Transmitted Aug. 8, 1881. R. & R., No. 2480.

Treasurer's Tax Deed.

Whereas Charles L. Flint, of Boston, Mass., did, on the 8th day of May, A. D. 1878, produce to the undersigned, Frank Davis, treasurer of the county of Butler, in the State of Nebraska, a certificate of purchase in writing, bearing date the sixth day of September, 1875, signed by W. M. Bunting, who at the last-mentioned date was treasurer of said county, from which it appears that F. A. Osborn did, on the sixth day of September, 1875, purchase at the office of the county treasurer of said county, at public auction, in said county, the tract, parcel, or lot of land lastly in this indenture described, which said real estate was sold to F. A. Osborn for the sum of sixteen and .74 dollars, that being the amount due on the following tract or lot of land situated in the county of Butler and State of Nebraska and returned delinquent for the non-payment of taxes, costs, and charges for the year 1874, to wit:

16 The south half of the southeast quarter and northwest quarter of the southeast quarter of section No. twenty-eight (28), in township No. thirteen (13) north, of range No. two (2) east.

And it appearing that the said Charles L. Flint is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said Charles L. Flint having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs, and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax-book or duplicate for the year 1874, and that said lands had been legally advertised for sale for taxes, and were sold on the sixth day of September, 1875:

Now, therefore, this indenture, made this eighth day of May, 1878, between the State of Nebraska, by Frank Davis, treasurer of said county of Butler, of the first part, and Charles L. Flint, of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell and convey, unto the said party of the second part, his heirs and assigns, forever the tract or parcel of land

mentioned in said certificate and described as follows, to wit: The south half of the southeast quarter and the northwest quarter of the southeast quarter of section No. twenty-eight (28), in township No. thirteen (13) north, of range two (2) east, situated in the county of Butler and State of Nebraska:

To have and to hold said mentioned tract or parcel of land,
17 with the appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns, forever in as full and ample a manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof the said Frank Davis, treasurer of said county of Butler, has hereunto set his hand and seal this eighth day of May, A. D., 1878.

FRANK DAVIS, [SEAL.]
Treasurer of Butler County, State of Nebraska.

Attest: B. F. RALPH,
County Clerk.

In presence of—
H. GARFIELD.
WM. M. SMITHSON.

THE STATE OF NEBRASKA, } *ss:*
Butler County, }

On this eighth day of May, A. D. 1878, before me, the undersigned, Horace Garfield, a notary public duly appointed and commissioned in and for said county, personally appeared the above-named Frank Davis, treasurer of said county, and acknowledged the foregoing instrument, and also the execution thereof, to be his voluntary act and deed as such treasurer; and I further certify that I know the said Frank Davis, who executed the above deed as grantor, to be the identical person described therein, and to be the treasurer of said county of Butler, in the State of Nebraska.

In witness whereof I have hereunto set my hand and notarial seal the date aforesaid.

[SEAL.] HORACE GARFIELD,
Notary Public.

Endorsed: Tax deed. The State of Nebraska to Charles L. Flint. The State of Nebraska, Butler county, *ss.* Entered on numerical index and filed for record in the clerk's office of said county the
18th day of May, 1878, at 12 o'clock, and recorded in book 7
18 of deeds, on page 23. B. F. Ralph, county clerk. S. S. E. ¼ N. W. S. E. 28, 13, 2, May 8th, 1878. Fees, $1.50, p'd by M.& O.

Upon the back of said stipulation appear endorsements in words and figures following, to wit, No. 314, F. Rob't Blair *vs.* Mary E. Wilson *et al.* Stipulation. Filed Jan. 14, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, at the said January term of said court, on

the 27th day of February, 1884, the following proceedings were had, as appears of record on folio 275, journal "I," of said court, to wit:

Judgment.

ROBERT BLAIR
vs.
MARY E. WILSON *et al.* } No 314, F.

This cause, being heard on the pleadings, evidence, and stipulation of facts, was submitted to the court without the intervention of a jury, trial by jury being waived by stipulation of parties.

On consideration whereof and the court being fully advised in the premises find on the issues joined for the plaintiff. It is therefore considered, ordered, and adjudged by the court that the said plaintiff is the owner of and entitled to the immediate possession of the premises described in the petition herein, to wit, the south half of southeast quarter and northwest quarter of southeast quarter of section twenty-eight, in township thirteen north, of range two east, situate in the county of Butler and State of Nebraska, and that said plaintiff have and recover of and from the said defendants the said premises, together with costs herein, taxed at $—.

Thereupon afterwards, to wit, on the 28th day of February, 1884, motion for new trial was filed in said case, which said motion is in words and figures following, to wit:

19 *Motion for New Trial.*

In the Circuit Court of the United States of America in and for the District of Nebraska.

ROBERT BLAIR
vs.
MARY E. WILSON and PARK G. DOBSON, Defendants.

The said defendants move the court for a new trial of this cause for the following reasons, to wit:

That the decision and judgment of the court is not sustained by the evidence and is contrary to law.

J. C. CROOKER AND
JAS. E. PHILPOTT,
Attorneys for Defendants.

Upon the back of said motion for new trial appear endorsements in words and figures following, to wit: No. 314, F. Robert Blair, pl'ff, *vs.* Mary E. Wilson *et al.* Motion for new trial. Filed Feb. 28, 1884. Elmer D. Frank, clerk. J. C. Crooker & J. E. Philpott, att'ys for def'ts.

Thereupon, afterwards, at the May term of said court, on the 24th day of May, 1884, the following proceedings were had, as appears of record on folio 389, journal "I" of said court, to wit:

ROBERT BLAIR
vs.
MARY E. WILSON *et al.* } 314, F.

This cause coming on to be heard on the motion of defendants to set aside the judgment and for a new trial herein was argued and submitted to the court by the attorneys for the respective parties; whereupon, after careful consideration thereof, it is ordered, adjudged, and decreed by the court that said motion be, and the same is hereby, denied, and the judgment heretofore entered herein to remain absolute.

20 Thereupon, afterwards, at the said May term of said court, on the 16th day of September, 1884, the following proceedings were had, as appears of record on folio 498, journal "I" of said court, to wit:

ROBERT BLAIR
vs.
MARY E. WILSON *et al.* } 314, F.

Now come the parties hereto, by their attorneys, and, on motion, it is ordered by the court that said defendants have leave to file affidavits to show value of property in dispute in this action to-day, and plaintiff to file counter-affidavits in 20 days.

Thereupon, afterwards, to wit, on the 16th day of September, 1884, affidavits of value of property were filed in said case, which said affidavits are in words and figures following, to wit:

Affidavit.

In the Circuit Court of the United States for the District of Nebraska.

ROBERT BLAIR, Pl'ff, *vs.* MARY E. WILSON, Def't.

STATE OF NEBRASKA:

R. M. Sibbett, *who* being first duly sworn, says he resides in Butler county, Nebraska; that he is a lawyer by profession, and has been engaged the five years last past in the sale of Butler county lands, having sold in that time many thousand acres of land, and is well acquainted generally with the value of land in said county.

He further says he is particularly acquainted with the following-described lands, to wit: S. ½ of the S. E. ¼ of S. 28, town. 13 N., R. 2 east, in said county, and knows the value thereof, and, ac-
21 cording to his best knowledge and judgment, he believes said lands are worth six thousand dollars; said lands are situated adjoining the village or city plat of Ulysses and [are] very valuable for building purposes, as well as agricultural purposes.

And further this affiant says not.

R. M. SIBBETT.

STATE OF NEBRASKA, } ss:
Butler County, }

Subscribed in my presence and sworn to before me by the said affiant this 31st day of May, 1884.

[SEAL.] L. D. WILGUS,
Notary Public.

Endorsed: Affidavit of R. M. Sibbett. Exhibit "A." J. E. Philpott & J. C. Crooker, att'y for Mary E. Wilson. Filed Sept. 16, 1884. Elmer D. Frank, clerk.

Affidavit.

In the Circuit Court of the United States for the District of Nebraska.

ROBERT BLAIR, Plaintiff, *vs.* MARY E. WILSON, Defendant.

STATE OF NEBRASKA:

Adam E. Spurks, *who* being first duly sworn, on oath says that he resides in Ulysses, Butler county, Nebraska, and has resided in said county the past fifteen years; that he is and has been and still is engaged in buying and selling real estate in said county, and knows the value of lands in the vicinity of Ulysses. He further says he knows the location and value of the following-described lands, to wit, viz: S. ½ of the S. E. ¼ of S. 28, town. 13 N., R. 2 E., in said county, and to his best knowledge and belief said lands, exclusive of buildings, are worth more than six thousand dollars. Said lands are situate adjoining the city plat of Ulysses, and very valuable for city use, as well as for agricultural purposes. And further he says not.

A. E. SPURCK.

22 STATE OF NEBRASKA, } ss:
Lancaster County, }

Subscribed in my presence and sworn to before me by the said A. E. Spurks this 9th day of August, 1884.

[SEAL.] L. W. BILLINGSLEY,
Notary Public.

Endorsed: Affidavit of A. E. Spurks. Exhibit "B." Filed Sept 16, 1884. Elmer D. Frank, clerk. J. E. Philpott & J. C. Crooker, att'ys for def't.

Affidavit.

In the Circuit Court of the United States for the District of Nebraska.

ROBERT BLAIR, Plaintiff,
vs.
MARY E. WILSON and PARK G. DOBSON, Defendants.

THE STATE OF NEBRASKA, } ss:
Butler County, }

Mary E. Wilson, S. T. W. Thrapp, H. S. Craig, C. A. Howe, H. H.

Miller, Robert Ruby, and W. F. Malone, being first duly sworn, say that they are each residents of Butler county, State of Nebraska; that each for her and himself do say that she and he are well acquainted with the following-described lands and tenements and the improvements thereon, to wit: The south half (S. ½) of the southeast quarter (S. E. ¼) and the northwest quarter (N. W. ¼) of the southeast quarter (S. E. ¼) of section numbered twenty-eight (28), in township number thirteen (13) north, of range numbered two (2) east, in the said county of Butler, in the said State of Nebraska, and that said affiants, each for herself and himself, say that the said lands and tenements and improvements thereon are worth in value the sum of five thousand dollars ($5,000.00) or more. And affiants further say not.

23

MARY E. WILSON.
S. T. W. THRAPP.
H. S. CRAIG.
C. A. HOWE.
ROBT. RUBY.
H. H. MILLER.
W. F. MALONE.

Subscribed in my presence and sworn to before me this the 30th day of April, A. D. 1884.

[SEAL.] GEO. P. REYNOLDS,
Notary Public.

Endorsed: In the U. S. C. court. Rob't Blair, pl'ff, *vs.* Mary E. Wilson *et al.* Affidavits of value of property described in petition. Exhibit "C" (3). Filed Sept. 16, 1884. Elmer D. Frank, clerk. J. E. Philpott and J. C. Crooker, att'ys for def't.

Affidavits.

In the Circuit Court of the United States for the District of Nebraska.

ROBERT BLAIR, Plaintiff,
vs.
MARY E. WILSON and PARK G. DOBSON, Defendants.

THE STATE OF NEBRASKA, } *ss*:
Butler County, }

Mary E. Wilson, H. S. Craig, James Reed, and S. T. W. Thrapp, being first duly sworn, say that they are each residents of the said county of Butler, in the State of Nebraska; that each for her and himself do say that she and he are well acquainted with the following-described lands and the tenements and improvements thereon, to wit: The south half (S. ½) of the southeast quarter (S. E. ¼) and the northwest (N. W. ¼) quarter of the southeast (S. E. ¼) quarter of section numbered twenty-eight (28), in township numbered thirteen (13) north, of range numbered two (2) east, in the said county of Butler, in the said State of Nebraska. And the said affiants, each for her

and himself, further say that the said lands, tenements, and improvements thereon are worth in value the sum of five thousand ($5,000.00) dollars or more. And further affiants say not.

MARY E. WILSON.
S. T. W. THRAPP.
H. S. CRAIG.
JAMES REED.

24 Subscribed in my presence and sworn to before me by each of the said affiants this sixteenth day of April, A. D. 1884.

[SEAL.] GEO. P. REYNOLDS,
Notary Public.

Upon the back of said affidavits of value of property appear endorsements in words and figures following, to wit: In the U. S. C. C. No. 314, F. Rob't Blair, pl'ff, *vs.* Mary E. Wilson *et al.* Affidavits of value of property described in petition. Exhibit "D" (4). Filed Sept. 16, 1884. Elmer D. Frank, clerk. J. E. Philpott and J. C. Crooker, att'ys for def'ts.

Thereupon, afterwards, to wit, on the 4th day of October, 1884, affidavits of plaintiff as to value of land were filed in said case, which said affidavits are in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } *ss.*:
Butler County, }

Park G. Dobson, being duly sworn, on oath says that he is sixty-five years of age; that he resides in the village of Ulysses, in Butler county, and that he has resided here since 1869; that I was one of the defendants in the suit of Robert Blair against Mary E. Wilson and Park G. Dobson, brought against us in the said court above named for the recovery of the possession of the south half of the southeast quarter and the northwest quarter of the southeast quarter of section 28, township 13 north, of range No. 2 east; that the said Mary E. Wilson and myself each answered separately in
25 said case for ourselves, she being in possession and claiming to own all of the above-described lands, excepting seven & one-half acres which I was in possession of and claimed to own; that since the trial of said case in the said court I have purchased of said Robert Blair & paid him for the said seven & one-half acres of said lands, and he has deeded the same to me; that I have never employed or authorized James E. Philpott and J. C. Crooker, att'ys-at-law, or any other person, to move for a new trial in said case, neither do I desire a new trial in said case, and they have no authority to appear in the said case for me for the purpose of taking the case to the Supreme Court of the United States, and I do not wish them to take or attempt to take said case to said Court so far

as I am concerned. I further say that I am well acquainted with land in this vicinity and its value; that the cash value of the above-described land, with all of the improvements, is not worth one cent over twenty-five dollars per acre; that the same is not the best kind of land for agricultural purposes; it is alkaline in spots all over the same; it lays near to the said village of Ulysses, which has a population of between seven and eight hundred; said village of Ulysses is about fifteen miles from David City, which is the county seat of Butler county; that I know R. M. Sibbett, an att'y-at-law; he resides in said David City.

PARK G. DOBSON.

Subscribed and sworn to before me this 17th day of September, 1884.

[SEAL.] G. E. WALDO,
Notary Public, Butler County.

In the Circuit Court of the United States in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } *ss:*
Butler County, }

Alfred Pardoe, being duly sworn, on oath says that he is sixty-three years of age; that he resides in the village of Ulysses, in said county of Butler, and has so resided for the last five years, and during that time I have been engaged in the business of purchasing grain in said town; that I am well acquainted with land and real estate in and about Ulysses, and know- its value; that I am well acquainted with the S. ½ of S. E. ¼ and the N. W. ¼ of S. E. ¼ of S. 28, T. 13, R. 2 E., in said county, and know- its value, and that the said above-described land is not worth more than from twenty-five to thirty dollars per acre—that price would be the highest figure for the same; I know- R. M. Sibbetts, an att'y-at-law; he resides in David City, fifteen miles from this place; that Ulysses contains between seven and eight hundred inhabitants.

ALFRED PARDOE.

Subscribed *in* and sworn to before me this 17th day of Sept., 1884.

[SEAL.] G. E. WALDO,
Notary Public, Butler Co.

In the U. S. C. Court in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } *ss:*
Butler County, }

Godfrey Ryhart, being duly sworn, on oath says that he is 36 years of age; that *I* reside- in Ulysses, in said county, and has
27 so resided for the last ten years, engaged in the livery busi-

ness; that I am well acquainted with and know the value of real estate in and about said Ulysses; that I am well acquainted with the S. ½ of S. E. ¼ and the N. W. ¼ of S. E. ¼ of S. 28, T. 13, R. 2, in said county, and know its value; that the same is not worth to exceed from twenty-five to thirty dollars per acre. It is not first-class land; there *is* lots of alkali on it.

his
GODFREY x REIHART.
mark.

Subscribed and sworn to before me this 17th day of Sept., 1884.
[SEAL.] G. E. WALDO,
Notary Public, Butler County.

In U. S. C. Court in and for District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } ss:
Butler County, }

George Reed, being duly sworn, says that he is 50 years of age; that he resides in Ulysses, in Butler county; that I have resided here for the last thirteen years; that I am well acquainted with the real estate in and about Ulysses and know its value; that I live near to the S. ½ of S. E. ¼ and N. W. ¼ of S. E. ¼ in S. 28, T. 13, in R. 2 E., in said county and know its value; that twenty-five dollars per acre would be a fair cash value for said land and all the same is worth at this time.

GEORGE REED.

Subscribed and sworn to before me this 18th day of Sept., 1884.
[SEAL.] ARTHUR HALE,
Notary Public, Butler County.

28 In U. S. C. Court in and for District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } ss:
Butler County, }

Dudley N. Thomas, being duly sworn, on oath says that he is 25 years of age; that he resides in Ulysses, in said Butler county, and has for the last three years; that he is well acquainted with the real estate in and about said Ulysses; that he knows well the value of the S. ½ of S. E. ¼ and N. W. ¼ of S. E. ¼ in S. 28, T. 13, R. 2 E., in said county; that thirty dollars per acre would be a fair price for said land and all that the same is worth in its present condition.

D. N. THOMAS.

Subscribed and sworn to before me this 18th day of Sept., 1884.
[SEAL.] G. E. WALDO,
Notary Public, Butler County.

In U. S. C. Court in and for District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } ss:
Butler County, }

W. A. Thurman, being duly sworn, says that he is 35 years of age; that he resides in Ulysses, in said Butler county, and has so resided for the last six years; that he is well acquainted with real estate in and about said Ulysses and knows its value; that he is well acquainted with the S. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼ in S. 28, T. 13, R. 2 E., in said county; that said above-described land is not worth to exceed from twenty-five to thirty dollars per
29 acre, with all of the improvements upon the same.

WM. A. THURMAN.

Subscribed and sworn to before me this 18th day of Sept., 1884.

G. E. WALDO,
Notary Public, Butler Co.

In the U. S. C. Court in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

STATE OF NEBRASKA, } ss:
Butler County, }

George E. Waldo, being duly sworn, on oath says that he is 33 years of age; that he resides in Ulysses, in said county, and has so resided for the last two years, engaged in law and real estate business; that he is well acquainted with and knows the value of real estate in and about said Ulysses; that he is well acquainted with the S. ½ S. E. ¼ & the N. W. ¼ of S. E. ¼ of S. 28, T. 13, R. 2, in said county, and knows its value; that the same is not worth to exceed from twenty-five to thirty dollars per acre.

GEO. E. WALDO.

Subscribed and sworn to before me this 18th day of September, 1884.

[SEAL.]

ARTHUR HALE,
Notary Public, Butler County.

In the U. S. C. Court in and for the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON.

30 STATE OF NEBRASKA, } ss:
Butler County, }

Arthur Hale, being duly sworn, on oath says that he is 32 years of age; that he resides in the village of Ulysses — for the last three years, and *am* engaged in the banking business; that he knows the value of real estate in and about said Ulysses; that he is well acquainted with the S. ½ S. E. ¼ & the N. W. ¼ of S. E. ¼ of S. 28, T. 13,

R. 2 E., in said county, and knows its value; that the same is worth twenty-five dollars per acre with all improvements thereon, and no more.

ARTHUR HALE.

Subscribed and sworn to before me this 18th day of Sept., 1884.
[SEAL.] G. E. WALDO,
Notary Public, Butler Co.

Upon the back of said affidavits of plaintiff appear endorsements in words and figures following, to wit: No. 314, F. Robert Blair *vs.* Mary E. Wilson. Affidavits &c., of plaintiffs as to value of land. Filed Oct. 4, 1884. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 2nd day of March, 1885 motion for writ of error was filed in said case, which said motion for writ of error is in words and figures following, to wit:

Motion.

In the Circuit Court of the United States for the District of Nebraska

ROBERT BLAIR *vs.* MARY E. WILSON *et al.*

Now comes the said Mary E. Wilson and moves the court here to allow her a writ of error to the Supreme Court of the United States, and that the court fix on the amount of bond therefor; and she avers
31 that the value of the property involved in this suit and defendants' interest therein exceeds the sum of five thousand dollars.

And this defendant avers that the value of her property involved herein in this suit exceeds the sum of five thousand dollars, and in support thereof refers the court to the several affidavits filed herewith and marked Exhibits "A," " B," " C," and " D," Nos. 1, 2, 3, & 4, showing the value of the lands in controversy.

JAS. E. PHILPOTT AND
J. C. CROOKER,
Attorneys for Def't.

Upon the back of said motion for writ of error appear endorsements in words and figures following, to wit: No. 314. Doc. F. Robert Blair *vs.* Mary E. Wilson *et al.* Motion for writ of error. Filed March 2, 1885. Elmer D. Frank, clerk. J. E. Philpott and J. C. Crooker, def'ts' attorneys.

Thereupon, afterwards, to wit, on the 2nd day of March, 1885, affidavits were filed in said case, which said affidavits are in words and figures following, to wit:

Affidavit.

In the Circuit Court of the United States in the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON and PARK G. DOBSON.

THE STATE OF NEBRASKA, }
Lancaster County, } *ss:*

Jas. E. Philpott, being first duly sworn, says that he was and is one of the attorneys for the said defendants; that he assisted in the preparing of the answer of the said defendant, Park G. Dobson, and also appeared for the said Dobson, on the trial of said case, as cocounsel for him; that he has acted as such attorney with the knowledge and consent of said Park G. Dobson; that he has at no time been discharged from his employment as such attorney by the said Dobson, nor by any person for him; that affiant's first knowl-
32 edge that said Dobson did not wish to have the said case passed upon by the Supreme Court of the United States, and that said Dobson did not desire to have the said suit further prosecuted and further adjudicated, was upon the filing in the said circuit court of the said affidavit of said Dobson; and this affiant further says that he verily believes that the said Dobson, since the trial of said suit, has wrongfully conspired with the said plaintiff and with plaintiff's attorney to the end to prevent the further adjudication of said suit for his own benefit and to the damage of the said Wilson, his said codefendant. And further affiant says not.

JAMES E. PHILPOTT.

Subscribed in my presence and sworn to before me this 20th day of February, 1885.

J. H. BROWN,
Justice of the Peace in and for City of Lincoln, Lancaster Co., Nebraska.

Affidavit.

In the Circuit Court of the United States in the District of Nebraska.

ROBERT BLAIR *vs.* MARY E. WILSON and PARK G. DOBSON.

THE STATE OF NEBRASKA, }
Lancaster County, } *ss:*

J. C. Crooker, being first duly sworn, says that at the time of the commencement of said suit in the said court this affiant and one W. F. Chapin were a firm practicing law at the city of Lincoln, in the State of Nebraska; that the said Park G. Dobson duly employed this affiant and the said W. F. Chapin as attorneys-at-law and solicitors in chancery to defend him in all the matters of said suit pertaining to the defense of the said Dobson in his behalf in said action then
33 so pending; that not long after said employment of this affi*davit* and said Chapin the said firm dissolved, and the said Philpott was duly employed in the said action to assist as cocounsel for the said defendants; that this affiant, with the knowledge and

consent of the said defendants, assisted by said Philpott, prepared the several answers of the said defendants, and, for and in behalf of said defendants, appeared and tried the said suit, and hitherto, as the attorneys for said defendants, at all times have appeared and acted as the attorneys in the matters and things in said suit required to be done and performed for the said Wilson and for the said Dobson; that the said Dobson has at no time paid off, discharged, or made known to this affiant that he does not further want his services as such attorney; that he did not know until the filing of the said affidavit of the said Dobson that the said Dobson did not want the said suit as to him further prosecuted and further adjudicated; that as such attorney for said Dobson he has not yet been discharged from his said employment by said Dobson. Affiant further says that from time to time during the pendency of said action he has written to and informed the said Park G. Dobson relating to the standing and progress of said suit; that the deeds, receipts for taxes, &c., to the said lands of the said Park G. Dobson were, during the pendency of said suit, left in the care and custody of this affiant, with the knowledge of said Dobson, and yet so remain in affiant's possession. Affiant further says that he verily believes that since the trial of said suit *that* the said Park G. Dobson has wrongfully conspired with the said plaintiff and the said attorney of the said plaintiff to the end to prevent the further prosecution and adjudication of said suit for his own gain, and to the wrong and damage of his codefendant, the said Mary E. Wilson. And further affiant saith not.

J. C. CROOKER.

34 Subscribed in my presence and sworn to before me this 20th day of February, 1885.

[SEAL.] A. J. SAWYER,
Notary Public.

Upon the back of said affidavits appear endorsements, in words and figures following, to wit: No. 314, F. Robert Blair *vs.* Park G. Dobson *et al.* Affidavits. Filed March 2, 1885. Elmer D. Frank, clerk.

Thereupon, afterwards, at the January term of said court, on the 2nd day of March, 1885, the following proceedings were had, as appears of record on folio —, journal "I" of said court, to wit:

ROBERT BLAIR
vs.
MARY E. WILSON and PARK G. DOBSON. } 314, F.

On motion, it is ordered by the court that defendants give a supersedeas bond herein in the sum of twelve hundred ($1,200.00) dollars.

Thereupon, afterwards, at the said January term of said court, on the 8th day of April, 1885, the following proceedings were had, as appears of record on folio —, journal "I" of said court, to wit:

ROBERT BLAIR
vs.
PARK G. DOBSON *et al.* } 314, F.

On motion of the plaintiff, it is ordered by the court that said plaintiff have leave to file additional affidavits and papers herein relative to the value of the premises in dispute, a part of same heretofore filed being missing from the files and records.

Thereupon, afterwards, to wit, on the 11th day of April, 1885, certificate of value on motion for writ of error was filed in said
35 case, which said certificate of value is in words and figures following, to wit:

THE STATE OF NEBRASKA, }
County of Butler, } *ss:*

I, James Evans, a county clerk in and for Butler county and State aforesaid, and having a seal, do hereby certify that the assessed valuation of the south half (S. ½) of the southeast (S. E. ¼) quarter and the northwest (N. W. ¼) quarter of the southeast (S. E. ¼) quarter of section twenty-eight (28), township thirteen (13) north, of range two (2) east, of the sixth (6) principal meridian, in Butler county, Nebraska, is for the year 1884 seven ($700.00) hundred dollars, as the same appears by the returned assessor's book for the year 1884, and so entered upon the original tax-list in my office.

Witness my hand and official seal this 27th day of March, A. D. 1885.

[SEAL.] JAMES EVANS,
County Clerk.

Upon the back of said certificate of value appear endorsements in words and figures following, to wit: No. 314, F. U. S. circuit court, district of Nebraska. Robert Blair *vs.* Mary E. Wilson *et al.* Certificate of value on mo. for writ of error. Filed Apr. 11, 1885. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 13th day of April, 1885, a bond was filed in said case, which said bond is in words and figures following, to wit:

Know all men by these presents that we, Mary E. Wilson and Lewis Speltz, are held and firmly bound unto Robert Blair in the full and just sum of twelve hundred dollars, to be paid to the said Robert Blair and his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

36 Sealed with our seals, and dated this — day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Robert

Blair, plaintiff, *vs.* Mary E. Wilson, judgment was rendered against the said Mary E. Wilson *et al.*, and the said Mary E. Wilson having obtained transcript and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert Blair, citing and admonishing [him] to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now, the conditions of the above obligation *is* such that if the said Mary E. Wilson shall prosecute her appeal to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

MARY E. WILSON.
LEWIS SPELTZ.

Approved by—
ELMER S. DUNDY, *Judge.*

Attached to said bond is affidavit of surety in words and figures following, to wit:

Affidavit of Surety.

UNITED STATES OF AMERICA, }
District and State of Nebraska, } *ss:*

I, Lewis Spelts, of the town of David City, county of Butler, and district and State of Nebraska, depose and say that I am one of the sureties, together with C. A. Sheets, on the bond of Mary E. Wilson, and that I am worth the sum of ten thousand dollars over
37 and above all exemptions from attachment or execution and after the payment of all just debts and legal liabilities incurred for any cause whatever, either as principal or surety, and that I am the owner of real estate worth said amount subject to execution under the laws of the State of Nebraska.

LEWIS SPELTS.

Sworn and subscribed before me this 25th day of March, 1885.
[SEAL.] STEPHEN CLINGMAN,
Notary Public, Butler Co., Nebr.

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 314, F. United States circuit court, district of Nebraska. Robert Blair *vs.* Mary E. Wilson *et al.* Bond. Filed Apr. 13, 1885. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 5th day of May, 1885, a writ of error was allowed in said case, of which the following is the original copy:

(Writ of error withdrawn, with leave to amend. See order on p. 40.)

38 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, within the eighth circuit, do hereby certify that the foregoing folios, from one to 39, contain true and faithful transcripts from the records and files of said court in the case of Robert Blair *vs.* Mary E. Wilson *et al.*, and that a copy of the writ of error has been lodged and remains in my office.

Witness my hand and the seal of said circuit court, at Omaha, Nebraska, this 6th day of June, A. D. 1885.

[Seal United States Circuit Court, District of Nebraska]

ELMER D. FRANK, *Clerk.*

39 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Robert Blair, plaintiff, and Mary E. Wilson and Park G. Dobson, defendants, a manifest error hath happened, to the great damage of the said Mary E. Wilson, in the said cause, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 5th day of May, 1885.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Allowed by—
ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 314, F. United States circuit court, district of Nebraska. Robert Blair *vs.* Mary E. Wilson. Writ of error. Filed May 5, 1885. Elmer D. Frank, clerk.

40 Supreme Court of the United States. October Term, 1885.

MARY E. WILSON *et al.*, Plaintiffs in Error,
vs.
ROBERT BLAIR. } No. 930.

On motion of Mr. A. A. Freeman, in behalf of counsel, it is ordered by the court that leave be, and the same is hereby, granted to amend the writ of error in this case by inserting the names of the proper parties to the case so far as they can be ascertained from the record and by affixing thereto the seal of the circuit court of the United States for the district of Nebraska.

November 16, 1885.

True copy.

[Seal of the Supreme Court of the United States.]

Test: JAMES H. McKENNEY,
Clerk Supreme C't U. S.

[Endorsed:] Supreme Court U. S., October term, 1885. No. 930.

41 In the *Supreme* Court of the United States, at Omaha, District of Nebraska.

Be it known that I, Elmer D. Frank, clerk of the *supreme* court of the United States, at Omaha, in said district of Nebraska, have this day in obedience to an order of the Supreme Court of the United States at Washington, District of Columbia, made on the 10th day of November, A. D. 1885, a certified copy of which order is hereto attached, corrected the writ of error allowed in the case of Robert Blair, plaintiff, against Mary E. Wilson and Park G. Dobson, on the 5th day of May, 1885, by inserting in said writ of error, after "before you," the words "or some of you," after "Blair" by striking out the word "between," after "Mary E. Wilson" by striking out "*et al.*" and inserting "and Park G. Dobson," defendants, and after "of the said" by striking out "defendants" and inserting "Mary E. Wilson," and after "as by" by striking out "their" and inserting "her."

Witness my hand and official seal at Omaha, Nebraska, this 10th day of December, 1885.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

42 [Endorsed:] Supreme Court U.S. 1885, Oct'r term. No. 930. Mary E. Wilson *et al.*, pl'ffs in error, *vs.* Robert Blair. Amended writ of error, with certificate of clerk. Filed Dec. 21, 1885.

Endorsed on cover: Nebraska C. C. U. S. No. 580. Mary E. Wilson, plaintiff in error, *vs.* Robert Blair. Filed September 7, 1885.

40 Supreme Court of the United States. October Term, 1885.

MARY E. WILSON *et al.*, Plaintiffs in Error,
vs.
ROBERT BLAIR. } No. 930.

On motion of Mr. A. A. Freeman, in behalf of counsel, it is ordered by the court that leave be, and the same is hereby, granted to amend the writ of error in this case by inserting the names of the proper parties to the case so far as they can be ascertained from the record and by affixing thereto the seal of the circuit court of the United States for the district of Nebraska.

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119-389

NOV 8 1886

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBET TERM, 1886.

No. 580.

MARY E. WILSON, PLAINTIFF IN ERROR.

vs.

ROBERT BLAIR. DEFENDANT IN ERROR.

TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

NO. 580.

MARY E. WILSON, PLAINTIFF IN ERROR,

vs

ROBERT BLAIR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

This suit is brought to this court from the U. S. Circuit Court of Nebraska, by Mary E. Wilson, Plaintiff in Error.

Robert Blair, residing in Illinois brought his action to recover possession of the following tract of land in Butler county Neb., viz., the south $\frac{1}{2}$ of the south east $\frac{1}{4}$ and the north west $\frac{1}{4}$ of the south east $\frac{1}{4}$ of section 28, in town. 13, north of range 2, East in Butler county, Nebraska, claiming ownership in fee simple, having entered the same with a M. B. Land Warrant at Nebraska City in November 1867, at which time he took a certificate

of Entry of the same subsequent and over a year after the entry it was discovered at the general Land Office that M. B. Law Warrant had been twice assigned before coming to the hands of Blair, and both assigments were deficient, in attesting witnesses and wanting a five cent United States revenue stamp to each assigment. In 1868 the Commissioner of the General Land Office notified the locator through the Local Land Office, of the deficiency in the M. B. Warrant to correct the deficieney and procure the two attesting witnesses, and affix to each assignment the five cent revenue stamp, suspending the issuance of the patent until that was done. (See Com's Letter of December 11th 1868 on page 6 of printed record, also letter of Com. dated May 4th 1881 p 8 of record.)

Blair paying no attention to this notice and neglecting it for over fourteen years, then caused the two five cent revenue stamps to be affixed on the Military Bounty Land Warrant.

In July 1881 following, he took out his patent and in December 1882, and brought his ejectment suit.

All lands in Nebraska are made taxable upon the issue of cirtificates of entry by the United States, the lands in controversy were assessed for taxation and becoming delinquent were sold for non-payment of the same, and a tax deed in compliance with the statutes of the State was given to the purchaser, one Charles S. Flint, Boston, Massachusetts, and by mesne conveyance to the plaintiff in error.

She went into immediate posession, made valuable improvements thereon by erecting a substantial dwelling house and barn, made fences, and paid taxes, in all to the amount of $3000, making it her home and was residing on it at the commencemeni of this suit.

At the trial in the Circuit Court a jury was waived and trial had before Hon. E. S. Dundy, presiding who decided the lands were not taxable until a patent had been issued.

From that decision the plaintiff in error prayed for a writ of error, to this court, the defendant in error resisted the granting of the writ, denying the value of the property to be $5000.

The plaintiff in error thereupon procured eleven affidavits of real estate dealers and others residing in the vicinity of the land in controversy, all of whom make oath, that the land was worth $5000, and some of them more than $5000, exclusive of improvements estimated as above at $3000. And the defendant in error filed eight affidavits to prove it worth less than $5000. The court on hearing the evidence, found the value sufficient and granted the writ. This being a question of fact and determined by the court we deem that question, in this controversy settled.

"All property, real and personal, within the state of Nebraska embraces all lands including lands bought from, or donated by the United States, and are subject to taxation in Nebraska, except those not especially excepted by statute." *See Gen. Statutes 1873, p. 897, Sec. 2.* "Under these statutes of Nebraska it was held by the Supreme court of this state in the case of *Bellinger vs. White, v. 5, p. 401.* In which the court says that a homesteader having complied with the law of Congress for five years and was entitled to a patent, but he if did not take the trouble to prove up, his land was subject to taxation, and the United States did not own the land but simply held the fee for the homesteader.

The court says, that in our view of the law a homestead is liable to taxation as soon as the owner has a right to make his final proof and complete his title."

In the court below it was insisted by the defendant in error that not until the issue of the patent, the title was still in the United States and hence the issuing of the certificate of entry was only a step which being followed by the issue of the patent, that then and then only was the land subject to taxation, the legal and equitable title, then being, merged in the defendant in error.

The policy of this doctrine seems to have been fully discussed and settled more than forty years ago in the case coming to this court from Michigan entitled: *Carrol vs. Stafford, 3rd Howard Reports, p 488.* I quote from the case: "The court says the authorities clearly show that these lands are subject to taxation by the state, on certificates of entry of purchase before the patent issues.

It would be very extraordinary if an individual could purchase lands of the United States, settle, improve and cultivate them, on certificates of purchase, and yet, because, from neglect and delay of the department the patents are not issued for several years, that they are exempt from taxation, while his neighbors were compelled to pay taxes, when he deriving no greater advantage from the possession and cultivation of his land."

"Lands purchased and paid for at the land offices, are not thereafter the property of the United States. The United States cannot withhold the patents, except in a few specified cases, as where the sale was illegal; where a prior sale or prior grant may have been made, or where it had been directed by government to be withheld from sales."

These are rare exceptions and do not effect or impair the general principles, that as soon as the property may be sold and transfered by him as is constantly the case, before it is patented.

"If the authorities and decisions were not in favor of the right to tax such land or certificates of purchase, reason and commonsense would demonstrate its equity and justice." * * "It is known to be universally the practice in the west when lands are purchased for residence and cultivation, that the purchaser immediately enters into possession of them, in all new states, lands so purshased of the United States have uniformily been held liable to be taxed before they are patented."

The conveyance of real estate whether by deed or by operation of law, is subject to the law of the state, where it lies, and it is difficult to say that any restraint can be imposed upon the local power on this subject. *Carrol vs. Safford, 3 Howard p 456.*

In the court below it was insisted by the defendant in error, that until the patent issued the fee-title was in the United States and hense the issueing of the certificate only one step which being followed by the issue of the patent, then and then only was the land subject to taxation, the legal and equitable titles then being merged in the defendant in error.

By the doctrine of relation the patent relates back to the date of certificate, the last proceeding, which consumates the convey-

ance, is held to relate to the day when the first proceeding or step was taken, at the time the title in Blair took effect by relation as of that date.

In the case of *Gibson vs. Chouteau* 13 Wallace p 96, Also laid in 12 Howard p 74 *Lessieres vs. Price*, the court laid down the broad principle of relation and the patent takes effect by relation to the time when the survey of the land, or to the time when the certificate was issued the time, as of the day when the first proceeding was had. In that case the patent was issued in 1862, but by relation dates back to the first act of location in 1818.

The doctrine of relation is laid down by Cruise on Real property v, 5. p. 510 to 511. "He says there is no rule better founded in law, reason and common sense, than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act, and operate from the substantial part by relation."

In the case of *Landes vs. Brant*, 10 Howard p. 374, "In every case when this court is called upon to investigate titles where conveyances of lands had been made during the time that a claim was pending before a board of commissioners, and where the claim was ultimately confirmed in the name of the original claiment, the intermediate assignments have been upheld against the confirmed, and his heirs, or devisees, in the same manner as if he had been vested in the legal title at the date of conveyance."

Judge Davis, in the case of *Witherspoon et al vs. Duncan et al* in 4 of Wallace says, in that case which like this one at bar the defendant in error and locator insisted "that the State had no power to impose a tax on the land until the entry was actually confirmed and the patent had emenated. It was conceded, that the power had been exercised from an early period. to tax lands as soon as entered, and not wait for the emenation of the patent; a practice that has obtained in nearly all the Western States." * * * * * *

"In no just sense can lands be said to be public lands after

they have been entered at the land office and a certificate of entry obtained." If they are public lands before entry, after it they are private property. "If subject to sale, the government has no power to revoke the entry and withhold the patent.

The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be public domain.

The power to tax exists as soon as the ownership is change and this is effected when the entry is made, on the terms allowd by law"

It was held in the *Pacific Coast Mining and Milling Co vs. James Spreas et. al. U. S. C. R. (Ninth Circuit) vol. 8* as follows:

Where a purchaser enters and pays for a tract of public lands receiving a certificate of purchase therefore the patent subsequently issued in pursuance of said certificate relates to, and takes effect from the date of entry, the entry and patent are regarded as one title; and the title of the purchaser dates from the date of the entry aed payment, and *not* from the date of the patent, and cites, *Bagnell vs. Broderick, 13 Peters p 451.*

Chotu vs. Moffatt 13 *Wallace* 93

Shepley vs. Cowan 91 *U. S.* 337

Smelting Co. vs. Kemp. U. S. 614

Hagner vs. Stanley 8 *Saw.*

Applying these principles as laid down to the case at bar. When the defendant in error procured his patent in May 1881 by relation it extended back to 1867, the date of his certificate of entry, and by nis own negligence in not repairing the omission of the two five cent stamps on the M. B. Warrant, which had he done so at any time he could have taken his patent. On issuance of the certificate of entry the land was segregated from all other public lands, government holding the fee for him until the suspention of the patent had been removed.

The plaintiff in error insists that the defendant in error is

barred by the Statutes of Limitations of Nebraska, from having and maintaining his said action against her, she having held and possessed the same peacably, openly and notoriously for a period of more than three years since the making and recording the tax deed for the lands in controversy, a period sufficient to grant her title as appears by the Statutes of Nebraska (See Session Laws of 1879 approved, March 1st taking effect Sept. 3st 1879, Section 134.) viz. *No action for the recovery of real-property, Sold for non-payment of taxes shall lie, unless the same is brought within three years after the Treasurer's deed shall have been recorded in the county where such lands lie.* (See Browns Compiled Statutes of Nebraska of 1885 p 515. Sec. 134.)

The tax deed to Flint was recorded in 1878 and this suit was bought in December 1882.

I cannot forbear to quote from the case of *Wheeler vs. Merriman* found in the 30th Minnesota Reports, page 372, as in many respects is similar to this, and certainly a cumulative authority in the case now before this court. The facts briefly stated are these: "One White purchased eighty acres of land of the United States in 1857 by locating upon it a military-bounty-land warrant, the issue of the patent upon this location was suspended on account of a *Caveat* being filed in the general-land-office against the warrant on the ground that the assignment was forged. On this ground the warrant was cancelled in 1864. The land was duly assessed for taxation and sold therefor to one Easton who subsequently quit-claimed to Harris who made valuable improvements thereon. That court, held that under the statute of that state a tax deed of such land was sufficient to constitute a color of title, although, it was contended that the land was not taxable, that the land being government land after the cancellation of the M. B. L. warrant in 1864. The court say it is well understood in such cases the locator or his assignees have the right to file another warrant or pay in cash in lieu of the cancelled warrant, and thereupon a patent will be issued upon the original location.

In this case the plaitiff was the grantee of White, the locator

who in July, 1880, paid $100 in lieu of the warrant and the substitution being made a patent issued to White upon the originel location of Oct. 2d, 1857. The court holding that the lands were properly taxable although the assignment of the warrant was found to be a forgery, and location was suspended for years yet the taxation by the state was correct; and that the grantee of the locator after a lapse of 23 years was allowed to substitute a cash payment of $100, in lieu of the warrant and a patent issued to White for the benefit of the plaintff upon the original location.

The location was never cancelled, but only suspended, and the $100, received by the United States was in lieu of the cancelled warrant, and relating back to the original location in 1857.

That court further says that it is well settled lands purchased of the United States and paid for, though not patented are subject to taxation, though it is true that in this case the entry might have been set aside had the substitution of the money for the land warrant not been made and it is true this condition attaches to all entries of public lands. The entry was finally approved and the patent issued related back to the original location and cites *Witherspoon vs. Duncan, 4 Wuallce 210*, as authoritative.

By the stipulation of the defendant in error all proceedings of error in the assessment taxation and sale; the giving of the Treasurer's deed, being waived, we insist that the defendant has no claim of right in law or equity entitling him to the recovery of these lands.

Since preparing the above we have received a notice coupled with a brief from the attornies or the defendant in error moving the court todismiss this case because the affidavits of value of the property in controversy was not $5,000. This notice and brief cites the plaintiff in error to appear before this court on their motion on the 7th of November inst.

In September last the attornies stipulates as follows: "It is hereby sipulated and agreed by and between the parties (to this case) that the same shall be submitted to the decision of the

Supreme Court on all errors assigned in said writ upon briefs to be filed on or before the 15th day of November next (1886.)

The counsel for the plaintiff in error insist that the defendant's motion to dismiss is not in apt time, nor good practice; if it were so, all stipulations would be useless and parties would be called before the court on frivolous motions as this appears to be to the counsel for the plaintiff.

Finally the counsel for the plaintiff in error would state as conclusions from this brief.

1st. That the land in controversy was not government land at the time of their taxation and sale.

2d. This land was taxable from the date of the certificate of entry.

3d. This tax deed, admitted correct, gave to the plaintiff in error an indifeasable title to said land.

4th. The court below erred in rendering judgement against the plaintiff in error. In conclusion we respectfully submit the foregoing considerations to this Honorable Court.

C. O. WHEDON,

Attorney.

and J. C. CROOKER,

of Counsel,

For Plaintiff in Error.

119-387

Office Supreme Court U. S.
FILED.
OCT 16 1886
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT

OF THE UNITED STATES.

MARY E. WILSON,
Plaintiff in Error,
vs.
ROBERT BLAIR,
Defendant in Error.

Brief of Counsel for Defendant in Error

ON MOTION TO DISMISS.

LEWIS A. GROFF,
C. S. MONTGOMERY, and
M. H. SESSIONS, of
Counsel for Defendant in Error.

A. C. Bausman, Printer, Minneapolis.

In the Supreme Court,

OF THE UNITED STATES.

MARY E. WILSON,
Plaintiff in Error,
vs.
ROBERT BLAIR,
Defendant in Error.

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR ON MOTION TO DISMISS.

This was an action of ejectment brought by Robert Blair against Mary E. Wilson and Park G. Dobson in the Circuit Court of the United States for the district of Nebraska.

It was tried to the court upon an agreed statement of facts, and judgment was in due time rendered in favor of Blair and against Wilson and Dobson jointly.

Mary E. Wilson alone applied for a writ of error which was allowed in her favor, and has been filed here, with a transcript of the record in the circuit court.

It did not appear in the record in the case or otherwise what was the amount or value of the matter

in dispute up to the filing of the application for the writ; the court therefore permitted the parties to make showing by affidavits and certificates upon that subject to accompany the writ when allowed. Such showing, as made by the affidavits and certificates of both parties filed, appears in the record in this court, subsequent to the judgment and prior to the writ.

We have filed a motion in behalf of the defendant in error to dismiss the writ for want of jurisdiction and such motion alleges three grounds, or reasons for such dismissal.

The first two of the alleged grounds we now abandon for the following reasons:

The motion was made by the writer hereof, who took no part in the management, or trial of the cause in the circuit court. It now appears that he was misinformed regarding the state of the record. As to the first ground, the writ of error *is* under the seal of the circuit court, and, the allegation to the contrary in the motion is a mistake.

As to the second ground: It is probable that the affidavit of Park G. Dobson contained in the record, shows a state of facts sufficient to excuse his non-joinder in the writ of error with the plaintiff in error, Wilson.

We, therefore, proceed at once to a presentation of ground "third" of the motion.

"The matter in dispute, exclusive of costs, does not exceed the sum or value of five thousand dollars."

First. What is the matter in dispute?

At the commencement of action it was one hundred and twenty acres of land, exclusive of improvements, the value of which, in a separate proceeding, under the occupying claimant's statute of Nebraska, the defendants in the circuit court might recover of the plaintiff in the event of the latter's success in the action. But, it appears from the pleadings in the case and from the affidavit of Park G. Dobson, one of the defendants in the court below that he was the sole claimant of seven and one-half acres of the one hundred and twenty, and that Mary E. Wilson, the plaintiff in error, had no claim or interest therein but that she only claimed and now claims the balance, viz: one hundred twelve and one-half acres, which amount, therefore, exclusive of improvements as above stated, is the matter in dispute herein.

Second. What was the value of this matter in dispute when the writ of error was allowed?

The honorable judge, sitting at the circuit, who allowed the writ refused to pass upon this question, as a matter of fact, saying that he deemed it his duty to allow the writ, leaving it for the supreme court, upon the showing made by the parties, to determine.

The plaintiff in error has attempted to meet the burden, which we submit rests upon her, of showing this value to be sufficient, by the following affidavits:

1. Of R. M. Sibbett.
2. Of Adam E. Spurks.
3. Of herself joined with six others.
4. Of herself joined with three others.

We contend that these affidavits are wholly insufficient even if undisputed.

1. R. M. Sibbett in his affidavit, says that "According to his best knowledge and judgment he believes, the S. ½ S. E. ¼ (80 acres) of said land worth $6,000.00.

He does not state what portion of this value belongs to improvements and what to the land itself. Neither does he state the value of the remaining 32½ acres, so that no conclusion can be reached from his statements as to what the value of the matter in dispute is.

Again the affidavit is incompetent because not positive. He does not testify that the 80 acres is worth $6,000.00, but that "he believes" it is worth $6,000.00.

2. Adam Spurks, in his affidavit says that "to his best knowledge and belief said lands, exclusive of buildings, are worth more than $6,000.00.

Here again the proof is incompetent for want of a positive statement of value.

3 and 4. The affidavits of the plaintiff in error joined with six others and of the plaintiff in error joined with three others are not only insufficient to prove her case, but we submit are evidence against her.

In the first place they give the value of the whole 120 acres *and* improvements, and state no facts to enable the court to determine what part of the value given must be placed upon the improvements, what upon the Dobson 7½ acres, or, what upon the 112½ acres in dispute.

In the second place, they fix the value of the whole 120 acres *and* improvements at "five thousand dollars or more." Thus even if the matter in dispute were

the 120 acres *and* improvements. its value as sworn to in these affidavits, would be insufficient because not exceeding $5,000.00.

Again the 7½ acres and improvements must have some value, which deducted from the $5,000.00 sworn to, reduces the value of the 112½ acres in dispute to less than $5,000.00.

This is the testimomy of the plaintiff in error herself. Is she not bound by it?

But the defendant in error did not leave the question to be determined upon the affidavits thus produced and filed by the plaintiff in error. He produced and filed eight separate affidavits and the certificate of the county clerk of Butler county.

All the persons named below, who make these affidavits, testify that they reside in the village of Ulyses, near the land, with which they are well acquainted and that they know the value of lands in that neighborhood, and of the land in controversy. They testify as to the character of the land and state positively its value including improvememts, as follows:

P. G. Dobson at $25.00 per acre.
Alfred Pardoe, at from $25.00 to $30.00 per acre.
Godfrey Reihart at from $25.00 to $30.00 per acre.
George Reed at $25.00 per acre.
D. N. Thomas at $30.00 per acre.
W. A. Thurman at from $25.00 to $30.00 per acre.
G. E. Waldo at from $25.00 to $30.00. per acre.
Arthur Hale at $25.00 per acre.

At these figures the lowest value of the whole 112½ is $2,812.50 and the highest $3,375.00.

James Evans, clerk of Butler county, certefies that the whole 120 acres was assessed for taxation in the year 1884 at the sum of seven hundred dollars.

The conclusion of the matter then, as to evidence of value is: Admitting, for the sake of the argument, that the affidavits of Sibbett and Spurks are competent, and that they tend to show a sufficient value of the matter in dispute for the purpose of jurisdiction, then, they are the only testimony having that effect, and, that testimony must be held ineffectual as against the great preponderance of the evidence to the contrary made up by the eight affidavits and the clerk's certificate filed by the defendant in error. corroberated, as they are, by the affidavits of the plaintiff in error herself and nine others, who testify nominally in her behalf.

It seems quite clear to us that the motion to dismiss should be sustained, and we respectfully submit these suggestions to that end.

LEWIS A. GROFF,
C. S. MONTGOMERY and
M. H. SESSIONS,
of Counsel for Defendant in Error.

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119-387

SUPREME COURT U. S.
FILED
NOV 12 1888
JAMES H. McKENNEY,
CLERK

IN THE SUPREME COURT

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Brief of Counsel for Defendant in Error

Lewis ~~Louis~~ A. GROFF,
C. S. MONTGOMERY, and
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Counsel for Defendant in Error.

A. C. Bausman, Printer, Minneapolis.

In the Supreme Court,

OF THE UNITED STATES.

MARY E. WILSON,
Plaintiff in Error,
vs.
ROBERT BLAIR,
Defendant in Error.

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

STATEMENT OF CASE.

November 26, 1867, the plaintiff located military bounty land warrant No. 3935 upon the S. ½ and N. W. ¼ of S. E. ½, S. 28, T. 13 N., R. 2 E., at the local land office in Nebraska City.

December 11, 1868, the commissioner of the general land office at Washington notified the officers at the local office, that said location had been under examination in that office, and that the two assignments on said warrant were without any attesting witness; and without the proper amount of internal revenue stamps as required by law, and the rules of that office. That said warrant was on that day returned to the local land office with instructions to have said assignments properly perfected by procuring two subscribing witnesses to each, and affix to each a five cent revenue stamp. Said location was on that day suspended.

July 17, 1878, the commissioner of the general land office,—still holding said location suspended on account of defective assignments, etc., on that day ordered the officers of the local land office to carry out instructions of December 11, 1868.

March 8, 1879, the commissioner of the general land office ordered the officers of the local office to return said warrant with all other suspended locations with warrants to the general office, and the warrant was returned to the general land office March 17, 1879, without revenue stamps on the same or witness to the assignments. The reception of said warrant was acknowledged to the local office March 24, 1879.

On the 4th day of May, 1881, the commissioner of the general land office gave the following decision and instructions concerning said location to the officers of the local office, to-wit: "The location was suspended for the reason that the proper number of revenue stamps had not been attached to the assignments of the warrant. Also for the reason that no witnesses names were attached to said assignments."

"The revenue stamps have been attached, and in view of the fact that the officers before whom the acknowledgments were made have certified to the identity of the assignors, and that eighteen years have elapsed since the assignments were made, and no objections thereto have been filed in this office, I have this day caused the suspension to be removed, and the location approved, and passed for patenting, no adverse claim for to tract being shown by our records; make the proper notes on your records." In pursuance of the foregoing, patent issued to the plaintiff July 20, 1881.

That upon the 6th day of September, 1875, the

land in controversy was sold for the taxes of 1874; that upon the 8th day of May, 1878, a tax deed was issued to Charles L. Flint, for the non-payment of taxes assessed in 1874. That the said Flint and his grantees, the defendants in this suit, have been in possession of said land under said tax deed from the time of its date to the present time, and are now in possession of the same, claiming to be owners of said land under said tax deed.

The first question for determination is was the land taxable in 1874? If it was not, then the judgment must be affirmed. Second, if it was taxable, is the *tax deed* and the possession under it sufficient under the statutes of Nebraska and the decisions of the Supreme Court of that State to cut off the title of the defendant in error to the land?

Congress. by an act approved March 21, 1852, enacted, "That all warrants for military bounty land which may have been or may hereafter be issued, under any law of the United States, and all valid locations of the same, which have been or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing, made and executed after the taking effect of this act, according to such form, and *pursuant to such regulations, as may be prescribed by the Commissioner of the General Land Office*, so as to vest the assignee with all the rights of the original owners of the warrant or location." R. S., 442. S. 2414.

Under the provisions of this act the commissioner of the general land office March 23, 1852, prescribed the rules and forms for the assignment and location of land warrants, one of which was that all assignments must be attested by two witnesses.

Lester's Land Laws, 585.

April 2, 1852, the commissioner sent out a circular to local offices, containing the forms and regulations established for the assignment of warrants, one of which was as follows, to-wit: "These forms and regulations will be strictly complied with in all cases, and all the evidence in each case must be complete in itself."

Lester's Land Laws, 589, 591.

August 3, 1854, Congress enacted the following: "The commissioner of the general land office is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be settled by the Secretary of the (Treasury) (Interior), the Attorney General, and the Commissioner conjointly, consistently with such principles, all cases of suspended entries of public lands, and of suspended pre-emption land claims, and to *judge in what cases patents shall issue upon the same.*"

R. S., 449, S. 2450 and 2457 inclusive.

March 3, 1855, congress passed an act, Sec. 4 of which provided "That said certificates or warrants may be assigned, transferred, and located by the warrantees, their assignees *or their heirs at law*, according to the provisions of existing laws regulating the assignments, transfers, and location of bounty land warrants."

Lester's Land Laws, 252.

May 3, 1855, the commissioner issues another cir-

cular under these laws to the officers of the local offices in which he calls the attention of local officer to the fact that warrants are received for location at their offices and returned to the commissioner upon assignments not attested by *two* witnesses, and he therein gives said local officers this peremptory order, "You are strictly enjoined to refuse any location when either of the foregoing objections, or others of a like character exist, requiring every applicant to have his warrant perfected in every respect, so that no subsequent action may be necessary for that purpose."

Lester's Land Laws, 600–601.

July 20, 1875, the commissioner issues another circular, under said Sec. 2414, to the local officers, in which he gives the following instructions: "To avoid, as far as possible, complications of land titles arising in consequence of the location of fraudulent or imperfectly assigned warrants, registers and receivers *are peremtorily enjoined to refuse all warrants* presented when the assignments thereof do not accord in every *essential particular* with the rules herein prescribed."

The fifth rule was, "Each assignment must be attested by *two subscribing witnesses;* the mark of a witness will not be respected." The 42d one was, that "A five-cent internal revenue stamp is required to be affixed to each assignment and certificate * * * executed and issued after Oct. 1, 1862, and prior to Oct. 1, 1872."

Copp's Public Land Laws. 727.

From the foregoing we find that ever since 1852, when warrants first became assignable by the act of

congress, that the registers and receivers have been strictly enjoined by the rules and regulations of the department of the interior, which rules and regulations were made by virtue of the law of congress, not to locate any military land warrants unless the assignments upon the same were attested by two witnesses to each assignment. In the case at bar the local officers, in violation of this instruction, located the warrant with no attesting witnesses to the assignment thereon, and without revenue stamps, and sent the same to the general office for the action of the commissioner in that condition. On the 11th day of December, 1868, when the case had been examined by the commissioner, the location of the warrant thus *wrongfully* made, was suspended, and the warrant returned to the local office for correction, which was the proper and just course to pursue.

Lester's Land Laws, 575.

The commissioner at this time not only had the right to suspend the location, but to have cancelled the same if he saw fit so to do. And the only possible interest that Blair could have had in the land was what law writers denominate "*determinable fees*," which are not taxable.

McLane vs. Boon, 35 Wis., 27.
Moriarity vs. Boon Co., 39 Iowa, 634.

Even under the laws of congress passed in 1834, which gave the *register* and *receiver* of the land district the power of ascertaining and deciding on the facts, and from whose opinion there was no appeal (a power which they did not possess in this case), under this law the proof on which the claim was to rest was

to be made "agreeably to the rules to be prescribed by the commissioner of the general land office," and if not so made the entry will be suspended.

Bernard vs. Ashby, Hempst. C. C. R., 671, Aff.,
18 How., 43.
Doe vs. Higgens, 39 Ala., 21, 23.

The case of Bates vs. Herron, 35 Ala., 117 in principle and many of its leading features, is identical with the case at bar, and clearly shows that the commissioner had the power to suspend, and that no title passed during the same.

It is admitted that lands sold by the United States may be taxed before they have parted with the title by issuing a patent, but that can only be done when the right to the patent is complete, and the equitable title is fully vested in the party without anything more to be paid or act done, going to the foundation of the right.

Railway Co. vs. Prescott, 16 Wall., 603.
Railway Co. vs. McSham, 22 Wall., 603.

It is, however, confidentially assested that a case cannot be found where, as in the case at bar, the entry or location of the land was suspended by the action of the offices of the government, and the patenting of the same refused by the government by reason of such suspensions, that while that was the status of the title at the land could be legally taxed.

As was well said by Justice Field in the case of Gibson vs. Chouteau, 13 Wall, 100, "The same principle which forbids any State legislation interfering with

the power of congress to dispose of the public property of the United States, also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition. The consummation of the title is not a matter which the grantees can control, but one which rests entirely with the government."

Blair could not compel the commissioner to remove the suspension of the location, and issue the patent, he made the sole judge of suspended entries, *"and to adjudge in what cases patents shall issue upon the same."*

R. S. 449. § 2450.
Marquir vs. Frisbie, 101 U. S. R., 475.
Wilcox vs. Jackson, 13, Peter 516.
Vol. 3, opinions of Att'y Gen'l. 93, 97, 652.

Government lands are not taxable until they are earned so that a patent could be demanded from the government for them, and the issuance of the patent is evidence that the land thereby conveyed was then earned, and the patent issued as soon as the land was earned, and evidence was only admissable for the purpose of showing that the plaintiff had fraudulently prevented the issuance of the patent at the proper time for the purpose of avoiding taxation on the land that he was entitled to.

Litchfield vs. Webster Co., U. S. R., 101, 773.
Th. McGregor vs. M. & M. R. R. vs. Brown, 39 Io. 655.
Goodrich vs. Beaman, 37 Io. 563.

The Commissioner, having power to require two witnesses to the assignments, can dispense with the same for satisfactory reasons.

Lyttle vs. the State of Ark., 9 How., 333.
Stark vs. Starrs, 6 Wall, 412-13.

The following cases are in fact and in principle identical with the case at bar, and show most conclusively that the land was not taxable in 1874 for the reason that said location was suspended.

Calder vs. Kugan, 30 Wis, 126.
Grant vs. R. R. Co., 7 N. W. R., 113 Io.
Reynolds vs. Co. of Plymouth, 7 N. W. R., 468 Io.
Bronson vs. Kukuk, 3 Dill., 490, 495.
Donovan vs. Kloke, 6 Neb., 124.
White vs. County, 5 Neb., 393.

It may be claimed that the removing of the suspension in 1881, and the issuing of the patent thereon, that the title then acquired to the land under a fiction of law, related back to the time of the location of the warrant, and that by reason of the same, Blair's title took effect as of that date, and as a consequent result would be taxable in 1874. That no such unjust and inequitable result would follow, is shown by the following cases:

Gibson vs. Chouteau, *Supra*.
Calder vs. Kugan, *Supra*.
Grant vs. R. R. Co., *Supra*.
Reynolds vs. County, *Supra*.
Bronson vs. Kukuk, *Supra*.

Supposing that the commissioner in May, 1881, instead of removing the suspension, and passing location for patent had canceled the location of the warrant, as he had a right to do, what then would have become of this pretended tax lien and deed issued thereon? In the language of Justice Day, in the case

of Moriarty vs. Boone Co., "*It becomes mere waste paper.*"

In conclusion, it is asked, "does the government of the United States hold title to her vast domains by a tenure so flimsy that while she is holding under advisement the application of one of her subjects to locate a warrant upon a portion of the same, to ascertain if said warrant and the location of the same is in all respects just and correct, and to determine whether said applicant is entitled to said land or not under said application to locate, and that while the same is thus held, the State can put in motion her machinery for taxation, and by virtue of the same take the lands from the power and control of the government *nolens volens*, asd convey the same to a stranger both to the government and to the applicant to locate?" We think that Chief Justice Dixon fully answers the question in the case of Calder vs. Kugan, in the following language, to-wit: "After the suspension which was merely for the purpose of giving the locator due notice and reasonable time to pay for the land as above stated, and before cancellation of the entry, the title was held by the United States, subject to be acquired in that way by the locator or his assignees of the certificate as a matter of mere grace or favor to him or them. There was no contract relation between the United States and the locator by which the United States was bound to sell him the land or to issue a patent therefor to him or his assignees on payment or tender of the money of another warrant of the same denomination. In such a case it seems idle to talk about the locator having any taxable interest in the land, or that the title of the United States was any more subject to be interfered with by the state power of taxation, than if no

steps whatever had been taken by the government towards a sale or disposition of it."

Second—It is earnestly contended that the tax deed under which the plaintiff in error claims title, is absolutely void under the statutes of Nebraska, and the decisions of the Supreme Court of that state. The statute form of the deed and the execution of the same is given on page 923 of the general statutes of 1873—

Printed Record pages 10 + 11

Read attached typewritten as though

THE DEED IS VOID FOR TWO REASONS;
FIRST, BECAUSE THE COUNTY SEAL IS NOT ATTACHED TO THE ATTESTATION OF B. F. RALPH, COUNTY CLERK.
SUTTON VS. STONE, 4 NEB., 319.
SECOND, BECAUSE THE OFFICIAL SEAL OF THE COUNTY TREASURER, FRANK. DAVIS, FOLLOWING HIS SIGNATURE, IS WANTING. THERE IS ONLY THE PRINTED WORD "SEAL" IN BRACKETS AFTER HIS SIGNATURE, THE SAME AS APPEARS ON PAGE 11 OF THE PRINTED RECEORD. THIS IS THE NATURE OF A SCROLL AND IS INSUFFICIENT.

C. S. Montgomery and
M. H. Sessions, of
Counsel for Defendant in Error.